FILED

FEB 13 2006

HAROLD S. MARENUS, CLERK U.S. BKCY. APP. PANEL OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

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In re:

YEN BACH RIST,

YEN BACH RIST,

Debtor.

Appellant,

Appellees.

ROBERT S. WHITMORE, Chapter 7

Trustee; FIDELITY NATIONAL TITLE INSURANCE COMPANY; CHICAGO TITLE COMPANY,

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¹This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

²Hon. Alan Jaroslovsky, Bankruptcy Judge for the Northern District of California, sitting by designation.

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

BAP Nos.	CC-05-1138-JBK CC-05-1214-JBK (Consolidated)
Bk. No.	RS 99-14422-DN
Adv. No.	RS 02-01032-DN

MEMORANDUM¹

Argued and submitted on January 18, 2006 at Pasadena, California

Filed - February 13, 2006

Appeal from the United States Bankruptcy Court for the Central District of California

Honorable David N. Naugle, Bankruptcy Judge, Presiding

Before: JAROSLOVSKY, 2 BRANDT and KLEIN, Bankruptcy Judges.

FACTS

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Debtor and appellant Yen Bach Rist filed her Chapter 7 petition on March 15, 1999. She scheduled rental property she owned at 812 Mel Avenue, Palm Springs, California, as being worth \$170,000.00 and encumbered by a greater amount. She did not claim an exemption in the property.

Eight months prior to her bankruptcy, Rist had entered into an agreement to sell the property to her renters and an escrow had been opened but had been canceled when the renters failed to qualify for a loan. Somehow, the deed to the renters was wrongfully recorded on April 30, 1999. Rist learned about the recording on July 6, 1999, and filed a lawsuit in state against the renters and the escrow company on October 26, 1999. not inform the Chapter 7 trustee, appellee Robert S. Whitmore, of anything related to the deed or her lawsuit. The Chapter 7 case was closed on October 20, 2000.

After learning of the lawsuit from a defendant, Whitmore had the case re-opened on January 17, 2002. By then, the property had appreciated considerably. He removed Rist's state court action to bankruptcy court and filed a separate adversary proceeding alleging that the deed was an unauthorized postpetition transfer. He then agreed to a compromise of both actions with the defendants to convey title to the renters for \$90,000.00.

The bankruptcy court approved the compromise, and Rist appealed. We declined to rule on the merits at that time, reversing the order approving the compromise because the court failed to make findings of fact and conclusions of law supporting its decision.³ Whitmore then renewed his request to the bankruptcy court, which again approved the compromise and substituted Whitmore as the plaintiff in the removed action, this time with appropriate findings and conclusions. Rist appeals these orders.

ISSUE

The only issue is whether the claims being compromised

STANDARD OF REVIEW

Whether property is included in a bankruptcy estate is a

question of law subject to de novo review. Moldo v. Clark (In re

DISCUSSION

belong to the estate.

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Rist makes two arguments in support of her assertion that the claims being compromised do not belong to the bankruptcy estate. First, she argues that they were never property of the estate because they arose after the filing. Second, she argues that if they were property of the estate they were abandoned by operation of law when the case was closed. Neither argument has

<u>Clark)</u>, 266 B.R. 163, 168 (9th Cir. BAP 2001).

merit.

 $^{^3}$ BAP No. CC-03-1633-BrBK, Nov. 22, 2004. Implicit in our disposition was that the bankruptcy court could revisit the matter if the proper procedure was followed.

There is no basis for the assertion that torts against property of the estate (in this case, slander of title) do not belong to the estate because they arise postpetition; if this were the law, a trustee would be powerless to redress many types of damage to estate property. The correct rule is that claims resulting from torts to property of the estate are themselves property of the estate. 11 U.S.C. § 541(a)(7); In re O'Dowd, 233 F.3d 197, 202 (3rd Cir. 2000); <u>In re Savary</u>, 57 B.R. 298, 299 (Bkrtcy.M.D.Fla.1986) ("Accordingly, when the loader was converted [postpetition], the party injured by the conversion was the debtor's estate, not debtor individually."). "Proceeds" of estate property under Section 541(a)(6) of the Bankruptcy Code include claims for damage to property of the estate, even where the damage occurs and the right to payment arises postpetition. <u>In re Reed</u>, 94 B.R. 48 (E.D.Pa.1988); <u>In re Haynes</u>, 1999 WL 33592904 (Bankr.C.D.Ill. 1999); In re White, 1989 WL 146417 (Bankr.N.D.Iowa 1989).

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Moreover, since the deed was wrongfully recorded while the bankruptcy was pending and before it had been abandoned, it was an unauthorized postpetition transfer of property of the estate avoidable by the trustee pursuant to \$ 549(a) of the Bankruptcy Code and recoverable pursuant to \$ 550. Property recovered pursuant to \$ 550 is specifically made property of the estate by \$ 541(a)(3).

Rist argues that the claims compromised by the trustee were abandoned to her when the case was closed. The major flaw in this argument is Rist's implicit assumption that the claim for wrongful recording of the deed is the same thing as the property

itself. At the time Rist filed her petition, only the property existed. During the time the property belonged to the estate, a claim arose which was not only different from the property itself but possibly more valuable considering the right to claim punitive damages. Pursuant to § 554(c) of the Code, only scheduled property is abandoned at the closing of a case; pursuant to § 554(d), other property of the estate remains property of the estate. The claim was never scheduled, or even disclosed, and therefore remained property of the estate after the case was closed.

There is no basis for Rist's position that she was entitled to remain silent regarding her knowledge of the wrongly-recorded deed because no specific provision of bankruptcy law required her to inform the trustee. Section 521(a)(3) of the Bankruptcy Code required Rist to cooperate with the trustee as necessary to enable the trustee to perform his duties; § 521(a)(4) required Rist to surrender to the trustee any recorded information, including documents, records and papers, relating to property of the estate. Rist was under a duty to inform the trustee that a deed to estate property had been wrongfully recorded, and was not entitled to withhold from him copies of the deed and her lawsuit. Fundamental principles of equity prevent Rist from profiting by her wrongful silence.

Rist fatally harmed her position when she withheld from the trustee her knowledge that a deed had been wrongfully recorded during the pendency of her case. As a result, the trustee only knowingly abandoned the property itself, not the claim for damages. Property is only abandoned by operation of law when it

is knowing; a debtor may obtain abandonment only by disclosure, not deceit. Cusano v. Klein, 264 F.3d 936, 946 (9th Cir. 2001).

CONCLUSION

The bankruptcy court properly concluded that the claims

compromised by the trustee were property of the estate and had

never been abandoned. Accordingly, we AFFIRM.